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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 SAMUEL ERICK RICHARDSON,

8 Plaintiff,

9 v.

10 MICHELE ALEXANDER, DEBBIE
11 OVERTURF, SUPERINTENDENT
HOLBROOK and WENDY STIGALL,

12 Defendants.

NO: 4:17-CV-5001-RMP

ORDER DISMISSING COMPLAINT

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14 By Order filed March 15, 2017, the Court advised Plaintiff of the deficiencies
15 of his complaint and granted him the opportunity to voluntarily dismiss, ECF No. 9.
16 Plaintiff did not comply with the Court's directive and has filed nothing further in
17 this action.

18 Plaintiff initiated this action while a prisoner at the Coyote Ridge Corrections
19 Center. He is proceeding *pro se* and *in forma pauperis*. Plaintiff seeks \$500,000.00,
20 claiming that out-of-state "jail credit" has not been properly applied to his sentence.
21

1 If a state prisoner challenges the fact or duration of his confinement, or seeks
2 a determination that he is entitled to release or a shortening of his period of
3 confinement, his only federal remedy is a writ of habeas corpus, with its requirement
4 of exhaustion of state remedies. *See Preiser v. Rodriguez*, 411 U.S. 475, 487-90
5 (1973); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994). Because a decision in
6 Plaintiff's favor would necessarily imply the invalidity of his term of incarceration,
7 Plaintiff's claim for monetary damages is premature until such time as that term has
8 been invalidated. *See Heck*, 512 U.S. at 487.

9 Before a federal court will consider the merits of a writ of habeas corpus
10 pursuant to 28 U.S.C. § 2254, the petitioner must demonstrate that each and every
11 claim in the petition has been presented for resolution by the State Supreme Court.
12 A state prisoner must exhaust state Supreme Court remedies with respect to each
13 claim before petitioning for a writ of habeas corpus in federal court. *Granberry v.*
14 *Greer*, 481 U.S. 129, 134 (1987); *Roettgen v. Copeland*, 33 F.3d 36, 38 (9th Cir.
15 1994); *Bland v. Calif. Dept. of Corrections*, 20 F.3d 1469, 1472 (9th Cir. 1994). The
16 exhaustion requirement protects the role of state courts in enforcing federal law,
17 prevents the disruption of state judicial proceedings, and gives the state's highest
18 court the opportunity to examine and vindicate a right of federal constitutional
19 magnitude. *Rose v. Lundy*, 455 U.S. 509, 518-20 (1982).

1 A claim is considered exhausted when it has been fully and fairly presented to
2 the state Supreme Court for resolution under federal law. *Anderson v. Harless*, 459
3 U.S. 4 (1982); *Harris v. Pulley*, 852 F.2d 1546, 1569-71 (9th Cir. 1988), *opinion*
4 *amended on other grounds and superseded by* 885 F.2d 1354, *cert. denied*, 493 U.S.
5 1051 (1990). Moreover, a petitioner seeking relief must have presented each claim
6 to the state Supreme Court based upon the same federal **legal** theory and the same
7 **factual** basis asserted in the federal petition. It is only then that the exhaustion
8 requirement of 28 U.S.C. § 2254 is fulfilled. *Hudson v. Rushen*, 686 F.2d 826 (9th
9 Cir. 1982), *cert. denied*, 461 U.S. 916 (1983); *Schiers v. People of State of*
10 *California*, 333 F.2d 173 (1964).

11 Plaintiff has not shown that a state tribunal or federal habeas court has
12 determined that his term of incarceration is invalid. Therefore, his claim is not
13 presently cognizable under 42 U.S.C. § 1983. *See Heck*, 512 U.S. at 487; *Edwards*
14 *v. Balisok*, 520 U.S. 641, 648-49 (1997). Consequently, **IT IS ORDERED** the
15 complaint is dismissed without prejudice.

16 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
17 enter judgment, forward copies to Plaintiff, and close the file. The Court certifies
18 any appeal of this dismissal would not be taken in good faith.

19 **DATED** June 1, 2017.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge